IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil Writ Petition No.2305 of 2007

Mithalal Ratanchand Jain — Petitioner
Vs.
Smt.Kala Bhagirath @ Ashok
Dhirajlal Zaveri & ors. — Respondents

Mr.R.D.Suryawanshi for petitioner.

CORAM: B.H.MARLAPALLE, J.

April 13, 2007.

P.C.

. Heard Mr.Suryawanshi, the learned counsel for the petition. This petition filed under Article 227 of the Constitution impugns the order dated 15/3/2007 passed by the learned 5th Joint Civil Judge, Junior Division at Thane below Exhibit 40 in Regular Civil Suit No.679 of 2004. By the said order the trial Court has appointed a Court commissioner so as to visit the suit property and make a report of factual position of the status of the suit property on the background that it has been alleged by the plaintiff that the petitioner - defendant has erected unauthorised sheds or put up illegal construction. Even if the factum of additional sheds or construction is recorded, whether the same could be legal or illegal is a matter of evidence and, therefore, on submission of the Court commissioner's

report the defendant has a right to file his reply and at the same time while the Court commissioner visits the suit premises the defendant could be given a notice and called upon to remain present. Mr.Suryawanshi pointed out that in the plaint of the suit, the suit property has been described whereas the order impugned refers to the entire survey number. This need not worry the defendant and the impugned order very specifically states that the Commissioner has to make local investigation of the suit property and make a report of factual position of status. This order, on the face of it, does not cause any prejudice to the defendant to oppose the suit and the report submitted by the commissioner will be subject to further scrutiny as is required in law.

. Hence the challenge to the impugned order is devoid of merits and the petition fails. The petition is rejected summarily.

(B.H.MARL